



January 28, 2005

HOUSE BILL No. 1313

DIGEST OF HB 1313 (Updated January 26, 2005 2:49 pm - DI 14)

Citations Affected: IC 6-3.1; noncode.

Synopsis: New generation tax credits. Provides that the commission for agricultural and rural development may certify taxpayers that invest in certain agricultural businesses as investor members. Provides that an investor member is eligible for a tax credit equal to the lesser of: (1) 75% of the investor member's investment; or (2) \$25,000. Limits the annual amount of credits available to certain capital projects. Requires the department of state revenue to determine a method to allocate credits among investor members.

Effective: Upon passage; July 1, 2005.

Friend, Gutwein, Borrer, Grubb

January 13, 2005, read first time and referred to Committee on Agriculture and Rural Development.
January 27, 2005, amended, reported — Do Pass.

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HB 1313—LS 7115/DI 103+



January 28, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1313

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-28-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a)** Subject to
3 section 11 of this chapter, a taxpayer that produces ethanol at a facility
4 is entitled to a credit against the taxpayer's state tax liability equal to
5 the product of:

6 (1) twelve and one-half cents (\$.125); multiplied by

7 (2) the number of gallons of ethanol produced at the Indiana
8 facility.

9 **(b) A taxpayer may assign any part of the credit to which the**
10 **taxpayer is entitled under this chapter to another taxpayer. A**
11 **credit that is assigned under this subsection remains subject to this**
12 **chapter.**

13 **(c) An assignment under subsection (b) must be in writing and**
14 **both taxpayers must report the assignment on their state tax**
15 **return for the year in which the assignment is made, in the manner**
16 **prescribed by the department. The assigning taxpayer may not**
17 **receive value in connection with the assignment under subsection**

HB 1313—LS 7115/DI 103+



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(b) that exceeds the value of the part of the credit assigned.

SECTION 2. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 29. New Generation Tax Credit

Sec. 1. As used in this chapter, "commission" refers to the Indiana commission for agricultural and rural development established by IC 4-4-22-6.

Sec. 2. As used in this chapter, "commodity" means the following:

- (1) An agricultural commodity.
- (2) A horticultural commodity.
- (3) Livestock (as defined in IC 4-4-3.2-1) and livestock products.
- (4) Any other commodity designated by the commission.
- (5) A commodity enumerated in subdivisions (1) through (4) that is used to produce renewable fuel.

Sec. 3. As used in this chapter, "development facility" means a facility that:

- (1) is located in Indiana; and
- (2) produces a commodity.

Sec. 4. As used in this chapter, "employee qualified capital project" means a new generation processing entity that has:

- (1) at least thirty-five (35) full-time employees; and
- (2) capital costs of at least ten million dollars (\$10,000,000);

as certified by the commission.

Sec. 5. As used in this chapter, "investor member" means a person that, beginning January 1, 2006, makes a capital investment in a new generation processing entity. A capital investment may be cash or property, including a commodity.

Sec. 6. As used in this chapter, "large capital project" means a new generation processing entity that has capital costs of at least one million dollars (\$1,000,000), as certified by the commission.

Sec. 7. As used in this chapter, "new generation processing entity" means a business entity other than a sole proprietorship that satisfies the following requirements:

- (1) The entity is approved by the commission under section 15 of this chapter.
- (2) The entity owns or operates a development facility or a renewable fuel production facility.
- (3) The entity has at least four (4) members or shareholders.
- (4) Investor members:

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(A) hold a majority of voting rights of the entity and any governing body of the entity; and

(B) control the hiring and employment of management of the entity.

The term includes an agricultural cooperative organized or incorporated under IC 15-7-1 that satisfies the requirements enumerated in subdivisions (1) and (2).

Sec. 8. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a pass through entity, a trust, a fiduciary, or any other business entity.

Sec. 10. As used in this chapter, "renewable fuel" includes the following:

- (1) Biodiesel (as defined in IC 6-3.1-27-1).
- (2) Ethanol (as defined in IC 6-3.1-28-2).

Sec. 11. As used in this chapter, "renewable fuel production facility" means a facility for the production of renewable fuel that satisfies both of the following:

- (1) The facility is located in Indiana.
- (2) The facility, after December 31, 2006, increases its renewable fuel production capacity each year by an amount determined by the commission.

The term includes an ethanol production facility (as defined in IC 6-3.1-28-3).

Sec. 12. As used in this chapter, "small capital project" means a new generation processing entity that has capital costs of less than one million dollars (\$1,000,000), as certified by the commission.

Sec. 13. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-2.5 (state gross retail and use tax);
- (2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);
- (3) IC 6-5.5 (financial institutions tax); and
- (4) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 14. As used in this chapter, "taxpayer" means a person that

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has state tax liability.

Sec. 15. (a) A new generation processing entity shall apply to the commission for approval.

(b) Before the commission approves a new generation processing entity, the commission shall require the new generation processing entity to submit the following information to the commission:

(1) A certificate of existence or other proof of good standing from the secretary of state or, for a new generation processing entity that is an agricultural cooperative, proof of organization or incorporation under IC 15-7-1.

(2) The number of investor members in the new generation processing entity.

(3) The amount and type of capital each investor member invests in the new generation processing entity.

(4) The dates on which each investor member contributes equity.

(5) The number of employees of the new generation processing entity and the date by which the new generation processing entity will employ the employees.

(6) The capital costs of the new generation processing entity.

(7) Any other information the commission determines is necessary.

(c) The commission may not approve a new generation processing entity that fails to submit any information required under subsection (b).

(d) Whenever the commission approves a new generation processing entity, the commission shall certify the new generation processing entity as an employee qualified capital project, a large capital project, or a small capital project.

Sec. 16. A new generation processing entity shall use the investments of investor members only for the following purposes:

(1) Acquisition and construction of facilities.

(2) Acquisition of equipment.

(3) Acquisition of working capital.

(4) Marketing and promotion of the new generation processing entity.

Sec. 17. The commission shall approve a new generation processing entity that satisfies the requirements of this chapter in the order in which the commission receives the new generation processing entity's approval application.

Sec. 18. (a) The commission shall adopt criteria to certify a

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taxpayer as an investor member. The criteria must include the following proof of the taxpayer's investment in a new generation processing entity:

(1) The amount of the taxpayer's investment, certified by the new generation processing entity, as applicable.

(2) Proof of deposit of the taxpayer's investment by the new generation processing entity, as applicable.

(b) To be eligible to receive a credit under this chapter, a taxpayer must apply to the commission for certification as an investor member.

(c) The commission shall certify a taxpayer that:

(1) applies to the commission for certification; and

(2) satisfies the criteria adopted by the commission under subsection (a).

Sec. 19. (a) Subject to section 23 of this chapter, a taxpayer that is certified as an investor member is entitled to a credit against the taxpayer's state tax liability in an amount equal to the lesser of:

(1) seventy-five percent (75%) of the taxpayer's investment in a new generation processing entity; or

(2) twenty-five thousand dollars (\$25,000).

(b) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to another taxpayer. A credit that is assigned under this subsection remains subject to this chapter.

(c) An assignment under subsection (b) must be in writing and both taxpayers must report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department. The assigning taxpayer may not receive value in connection with the assignment under subsection (b) that exceeds the value of the part of the credit assigned.

Sec. 20. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 21. If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for the first taxable year in which the taxpayer

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claims the credit, the taxpayer may carry over the excess to the following taxable years. The amount of the carryover from a taxable year must be reduced to the extent that the taxpayer uses the carryover to obtain a credit under this chapter for a subsequent taxable year.

Sec. 22. To receive the credit provided by this chapter, a taxpayer must do the following:

(1) Claim the credit on the taxpayer's state tax return in the manner prescribed by the department in the taxable year in which the taxpayer invests in the new generation processing entity.

(2) Submit to the department a copy of the commission's certificate issued under section 18(c) of this chapter finding that the taxpayer is an investor member.

(3) Submit to the department proof of all information that the department determines is necessary to calculate the credit provided by this chapter.

Sec. 23. (a) The total amount of credits allowed under this chapter for all taxpayers in a taxable year may not exceed six million dollars (\$6,000,000).

(b) The total amount of credits allowed under this chapter in a taxable year for all investor members of a large capital project is one million five hundred thousand dollars (\$1,500,000).

(c) The total amount of credits allowed under this chapter in a taxable year for all investor members of an employee qualified capital project is three million dollars (\$3,000,000).

(d) This subsection applies if the total amount of credits for which all investor members of an employee qualified capital project or a large capital project are eligible in a taxable year exceeds the applicable maximum allowable amount under subsection (b) or (c). The department shall prorate the applicable maximum allowable amount among all eligible investor members based on each investor member's investment in the employee qualified capital project or large capital project in relation to the total investment of all investor members in the employee qualified capital project or large capital project.

(e) The department shall determine a method of allocating credits under this chapter.

Sec. 24. An investor member of a certified:

- (1) employee qualified capital project;
- (2) large capital project; or
- (3) small capital project;

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1 that fails to employ the number of employees approved by the
2 commission under section 15(b) of this chapter shall repay the
3 amount of any credits the investor member receives under this
4 chapter.

5 Sec. 25. A taxpayer may transfer, sell, or otherwise convey a tax
6 credit allowed under this chapter.

7 Sec. 26. A taxpayer may not claim both a credit under this
8 chapter and an ethanol production credit under IC 6-3.1-28.

9 Sec. 27. The commission may adopt rules under IC 4-22-2 to
10 carry out its duties under this chapter.

11 Sec. 28. This chapter expires December 31, 2015.

12 SECTION 3. [EFFECTIVE JULY 1, 2005] IC 6-3.1-29, as added
13 by this act, applies to taxable years beginning after December 31,
14 2005.

15 SECTION 4. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1313, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3.1-28-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a)** Subject to section 11 of this chapter, a taxpayer that produces ethanol at a facility is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) twelve and one-half cents (\$.125); multiplied by
- (2) the number of gallons of ethanol produced at the Indiana facility.

(b) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to another taxpayer. A credit that is assigned under this subsection remains subject to this chapter.

(c) An assignment under subsection (b) must be in writing and both taxpayers must report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department. The assigning taxpayer may not receive value in connection with the assignment under subsection (b) that exceeds the value of the part of the credit assigned."

Page 4, line 39, after "19." insert "(a)".

Page 5, between lines 2 and 3, begin a new paragraph and insert:

"(b) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to another taxpayer. A credit that is assigned under this subsection remains subject to this chapter.

(c) An assignment under subsection (b) must be in writing and both taxpayers must report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department. The assigning taxpayer may not receive value in connection with the assignment under subsection (b) that exceeds the value of the part of the credit assigned."

Page 6, after line 28, begin a new paragraph and insert:

"SECTION 3. An emergency is declared for this act."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1313 as introduced.)

GUTWEIN, Chair

Committee Vote: yeas 12, nays 0.

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